IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3544 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDRAVADAN K SHAH - Petitioner(s)
Versus
CHANDUBHAI BECHARBHAI BIN & 1 - Respondent(s)

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Appearance :
MR BJ JADEJA for Petitioner(s) : 1,
MR AJ PATEL for Respondent(s) : 1,
Mr. MR Mengdey, AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 29/09/2005

ORAL JUDGMENT

By way of this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal ['GRT' for short]

dated 10th March 1989 in Revision Application No. TEN.B.A. 783/87 in dismissing the said Revision Application and confirming the order passed by the Deputy Collector (Land Reforms), Tenancy Appeals, Kheda dated 30th September 1987 in Tenancy Appeal No. 74/1987 as well as the order passed by the Mamlatdar and ALT, Matar dated 16th February 1987 in Tenancy Case No. 856 of 1986 in declaring the respondent No.1 herein as tenant of the land in question under Section 32(1-B) of the Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as "the Tenancy Act"].

2. The dispute is with regard to land bearing Survey No. 673 – Block No. 713 admeasuring 4 acres and 23 gunthas at village Malavada in Matar Taluka of Kheda District. Father of respondent No.2 was the original landlord/owner of the land in question. The respondent No.1 claims to be the tenant of the land in question as son of Becharbhai Somabhai Parmar. Proceedings were initiated under Section 32-G of the Act between them in the year 1961 and by order dated 21.4.1961, the said proceedings were dropped on the

ground that Becharbhai Somabhai Parmar had not cultivated the land on the Tillers' Day, i.e., 1.4.1957. It appears that thereafter proceedings came to be initiated in the year 1997 under Section 32(1-B) of the Act. However, the said proceedings, being Tenancy Case No. 592/77 were also dropped by the Mamlatdar and ALT, Matar on 9.10.1977 on the ground that provisions of Section 32(1B) of the Act were not attracted. It appears that the petitioner purchased the land in question by registered Sale Deed dated 22.4.1982 and the petitioner was put in possession of the land in question on 22.3.1982 and he continued to be in possession and cultivation of the land in question. It appears that thereafter the Deputy Collector (Tenancy Appeals), Kheda exercised suo motu powers of revision by registering Case No. TEN/Revision/Case No. 108/84 exercising power under Section 76-A of the Act after a period of 7 years of passing the order by the Mamlatdar and took the order passed by the Mamlatdar and ALT dated 9.10.1977 in Tenancy Case No. 592/77 under suo motu revision and issued notice upon respondents No. 1 and 2 and by order dated 17.8.1984 set aside the order passed by

the Mamlatdar and ALT dated 9.10.1977 and remanded the matter for fresh inquiry. It appears that thereafter on remand the Mamlatdar and ALT registered Tenancy Case No. 856 of 1986 and after holding the enquiry by judgment and order dated 16th February 1987 held that the respondent No.1 was entitled to get benefit under Section 32(1B) of the Act. It appears that being aggrieved and dissatisfied with the said order the petitioner preferred Tenancy Appeal No. 74/87 before the Deputy Collector, Tenancy Appeal, Kheda and the Deputy Collector, by judgment and order dated 30th September 1987 dismissed the said appeal. Being aggrieved and dissatisfied with the same the petitioner preferred Revision Application No. TEN.B.A. No. 783/87 before the GRT and the GRT also dismissed the said revision application confirming the order passed by both the authorities below. Being aggrieved and dissatisfied with the aforesaid orders, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri BJ Jadeja, learned advocate appearing for the petitioner has vehemently submitted that the Deputy Collector as well the GRT have not properly appreciated the fact that though the petitioner has purchased the land in question in the year 1982 and was put to possession the Mamlatdar & ALT did not give any opportunity to the petitioner and therefore the said order is in breach of principles of natural justice. It is further submitted that by him that the GRT has materially erred in not properly appreciating and considering the submissions made on behalf of the petitioner that the Deputy Collector should not have exercised suo motu powers under Section 76A of the Tenancy Act after a period of 7 years taking the order passed by the Mamlatdar and ALT dated 9.10.1977 under suo motu revision; that the said aspect has not been considered and/or dealt with by the GRT properly; only on the ground that the order passed by the Deputy Collector, Tenancy Appeals dated 17.8.1984 has become final and the same was not challenged, the question of initiating proceedings after 7 years has not been considered; and therefore it is requested to remand the matter. It is further

submitted by him on merits that even provisions of Section 32(1-B) of the Tenancy Act were not applicable more particularly when earlier the proceedings were dropped in the year 1961.

4. Shri AJ Patel, learned advocate appearing on behalf of the respondent No.1, while supporting the judgment and order passed by all the 3 authorities below, has submitted that there are concurrent finding of facts given by all the three authorities below by which it is held that the respondent No.1 is entitled to benefit of Section 32(1B) of the Act and this being a petition under Article 227 of the Constitution of India this Court should not interfere with when there is no jurisdictional error much less an error of law. It is submitted by him that when the order of 17.8.1984 has become final, it is not open for the petitioner to contend that the Deputy Collector has exercised suo motu powers after a period of 7 years and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that proceedings came to be initiated under Section 32(1B) of the Tenancy Act in the year 1977 being Tenancy Case No. 592/77, and the Mamlatdar and ALT, Matar, by order dated 9.10.1977 dropped the proceedings on the ground that provisions of Section 32(1B) of the Act were not attracted. It is also not in dispute that the petitioner purchased the land in question for a consideration of Rs. 12,751 by registered Sale Deed dated 22.4.1982 and only thereafter the Deputy Collector, Tenancy Appeals, exercised suo motu revisional powers under Section 76A of the Act being TEN/Revision/Case No. 108/84 and took the order passed by the Mamlatdar and ALT, Matar dated 9.10.1977 under suo motu revision. It appears that while exercising suo motu revisional powers, though the petitioner has purchased the land in question by registered Sale Deed in between no notice was issued upon the petitioner and the Deputy Collector by judgment and order dated 17.8.1984 set aside the order passed by the Mamlatdar and ALT and remanded the matter to him for fresh enquiry. Thereafter, the

Mamlatdar and ALT registered Tenancy Case No. 856/1986 and on remand passed the order dated 16.2.1987. In that proceedings also the petitioner was not heard and/or was not party to the proceedings. The petitioner challenged the order passed by the Mamlatdar and ALT dated 16.2.1987 in Tenancy Case No. 856/1986 before the Deputy Collector, Tenancy Appeal, Kheda and on dismissal of the same before the GRT where it was contended on behalf of the petitioner that the Deputy Collector ought not to have exercised the suo motu revisional powers after a period of 7 years while exercising the powers under Section 76A of the Tenancy Act. It is contended that the GRT has not considered or dealt with the same only on the ground that the order dated 17.8.1984 passed by the Deputy Collector has not been challenged and the same has become final. It is required to be noted that the petitioner was not a party when the Deputy Collector passed the order on 17.8.1984. Therefore, there was no question at that time of challenging the said order more particularly when the matter was remanded.

6. In light of the above, when subsequently it has been contended on behalf of the petitioner that the Deputy Collector ought not to have exercised the suo motu revisional powers under Section 76A of the Tenancy Act after a period of 7 years, the GRT was at least required to deal with and/or consider the same, however, unfortunately the GRT has not considered the same. Under the circumstances, without entering into the other larger question and the merits of the case, the matter is required to be remanded to the GRT for deciding the Revision Application afresh after considering and dealing with the submissions on behalf of the petitioner that the Deputy Collector ought not to have exercised suo motu revisional powers after a period of 7 years while taking the order passed by the Mamlatdar and ALT, Matar, dated 9.10.1977 in Tenancy Case No. 592/1977.

7. For the reasons stated above, the petition partly succeeds. The judgment and order dated 10th March 1989 passed by the GRT in Revision Application TEN.B.A. 783/1987 is hereby quashed and set aside and the matter is remanded to the GRT for fresh decision

as stated above. The GRT is directed to decide and dispose of the same as early as possible preferably within the period of 6 months from the date of receipt of this order. Until then, the parties are directed to main status-quo. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.